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| In re Application of | : | |
| FAUSSE, Arnaud | : | |
| U.S. Application No. 09/914,282 | : | DECISION ON PETITION |
| PCT No.: PCT/FR00/00483 | : | UNDER 37 CFR 1.47(b) |
| Int. Filing Date: 25 February 2000 | : | |
| Priority Date: 26 February 1999 | : | |
| Attorney Docket No.: 09669/007001 | : | |
| For: CLEANSING TOWLETTE DISPENSER | : | |

This is a decision on applicant's "Petition under 37 C.F.R. 1.47(b)" filed 28 May 2002 to accept the application without the signature of inventor, Arnaud Fausse.

BACKGROUND

On 25 February 2000, applicant filed international application no. PCT/FR00/00483 which claimed a priority date of 26 February 1999. A proper Demand was filed with the International Preliminary Examination prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was extended to expire 30 months from the international filing date, i.e., 26 August 2001.

On 24 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); English translation of international application; and a preliminary amendment.

On 12 October 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 28 May 2002, applicant filed "Petition under 37 CFR 1.47(b)" and a petition and requisite fee for a five-month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR

1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of item (1), (3), and (6) above. However, items (2), (4), and (5) have not been satisfied.

Concerning Item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

A review of the present petition reveals that petitioner has not satisfied item (2) above, in that the applicant has not shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Arnaud Fausse. Petitioner has provided a copy of the cover letter addressed to Mr. Fausse mailed March 1, 2002 by registered mail. The registered mail letter, provided by the petitioner, is unclear as to the delivery status of the letter. Was the registered letter(s) returned as undeliverable? Was the letter(s) received by Mr. Fausse or by someone at the last known address? Were any other attempts made to locate Mr. Fausse? The single mailing of the papers to the nonsigning inventor's last known address does not constitute a "diligent" effort to locate the inventor. Applicant must show that alternative means were employed, such as a search of telephone and/or Internet directories, in an attempt to locate Mr. Fausse. Furthermore, it does not appear that the petitioner has first hand knowledge of all the facts. Lastly, it is unclear whether the petitioner is asserting that the nonsigning inventor has refused to execute the application or cannot be located to execute the application.

In order to meet the requirements of 37 CFR 1.47(b) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers was sent to Mr. Fausse and when such papers were sent and that Mr. Fausse has subsequently refused to execute the application. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

Regarding Item (4), an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has not been provided.

Concerning Item (5), petitioner has not demonstrated that applicant has a propriety interest in the invention. (See M.P.E.P., section 409.03(f))

For the reasons stated above, it would not be appropriate to accept the application without the signature of Arnaud Fausse under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Legal Affairs Division of the PCT Legal Office.



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